



Dividend Filing Guidelines

Applicable Law

Dividend filings are primarily governed by s. 631.51, Wis. Stat., which states, in part:

Any insurer may distribute a portion of surplus attributable to policies, other than life insurance or annuities, in amounts and with classifications the board of directors determines to be fair and reasonable. Such distribution may not be made contingent on the continuation of the policy or of premium payments. A schedule explaining the basis for the distribution shall be filed with the commissioner prior to the distribution. When not specified in the policy, a schedule explaining the basis for the distribution shall be filed with the commissioner at least 30 days prior to the distribution.

When to File?

The "schedule" explaining the basis for the distribution consists of: the Dividend Plan (i.e. plan descriptions/rules, differentiating guidelines, participating endorsements, underwriting worksheets, etc.) AND the Dividend Declaration (i.e. board's declaration to distribute dividends).

Many companies file them separately by filing the dividend plan(s) once, prior to marketing them, to assure their compliance, in which case the dividend plans remain on file until withdrawn or revised. Then the company submits separate filings every time the Board declares a dividend distribution (to be payable from surplus attributable to policies that have expired/terminated) in accordance with the previously filed dividend plans. These dividend declaration filings tend to be on a monthly, quarterly or annual basis, depending on how often the company's Board meets and distributes dividends.

Alternatively, other companies wait to file their dividend plan(s) at the same time they file the Board's declaration to distribute dividends, which is after the policies have expired/terminated* and before the dividend is actually distributed. Any compliance issues are addressed at that time.

How to File Dividend Plans?

Dividend plan filings are not considered rate, rule or form filings and do not go through the usual filing submission process. Dividend plan filings cannot be submitted via SERFF. Instead, the paper filing should contain the following and should be directed to the attention of Ronnie Demergian:

- A cover letter describing the applicable line(s) of business, new plan(s) or plan changes. Do not send OCI or NAIC transmittal forms. Indicate the subject as "Dividend Filing", not a form or rule filing.
- All applicable dividend plan documentation (plan descriptions/rules, differentiating guidelines, endorsements, underwriting worksheets, etc.). The filing should be limited to only plans offered in WI. Do not file multi-state dividend plans unless each document clearly identifies everything that applies to WI policyholders.
- A duplicate copy of the entire filing, along with a self-addressed stamped envelope, if the company would like a copy stamped "filed".

How to File Board of Directors' Declaration of Dividend Distribution (Declaration Filing)?

As with the dividend plans, dividend declaration filings are not considered rate, rule or form filings. They do not go through the usual filing submission process and cannot be submitted via SERFF. Instead, the paper filing should contain the following and should be directed to the attention of Ronnie Demergian.

- A cover letter describing the applicable line(s) of business. Do not send OCI or NAIC transmittal forms. Indicate the subject as "Dividend Filing". The filing should be limited to or clearly identify dividend distributions declared in WI.
- An actual copy of the Board's declaration/resolution is not required but the filing should include at least:
 - The date the Board declared the dividend distribution.
 - If the dividend plan(s) were previously filed, provide: the name of the WI dividend plan(s) subject to the dividend declaration; the date(s) they were previously filed with OCI; a statement affirming the distribution is being made in accordance with the previously filed plan(s).

- If the dividend plan(s) were not previously filed, provide: all of the applicable WI dividend plan documentation described above in “How to file dividend plans”.
- The expiration/termination dates of the policies covered by the Board’s declaration of dividend distribution*. You may but are not required to list each individual policy. It is sufficient to indicate a class of policies, such as: “All eligible policies expiring or terminating from 9/1/xx-12/31/xx”.
- * **Note:** If the Board’s declaration involves policies expiring/terminating after the Board’s meeting, the filing must clearly state: “*The board’s declaration is not effective for any policy until after the policy expires or terminates.*” For additional information, refer to OCI’s two *Bulletin to Insurers* dated June 2, 1998 ¹ and July 8, 1999 ¹.
- The date the dividend payments will be issued. It is acceptable to provide a date range like “after OCI’s acknowledgement but no later than xx days” or “within xx days”.
- A duplicate copy of the entire filing, along with a self-addressed stamped envelope, if the company would like a copy stamped “Filed”.

PROHIBITED PROVISIONS – Any filings containing provisions contrary to the Wisconsin insurance laws, including the following provisions, will be disapproved:

CONTINGENT ON THE CONTINUATION OF THE POLICY AND THE PAYMENT OF PREMIUM

Section 631.51 (2), Wis. Stat., prohibits the distribution of a dividend from being contingent on the continuation of the policy and the payment of premium. It is OCI’s position that had the legislature only been concerned with companies making dividends contingent on the ‘renewal’ of the policy, they would have used the word ‘renewal’ as they have in other sections of the law. Because they chose the word ‘continuation’, OCI holds companies to the broader meaning of the word. This means that any policy that cancels mid-term, for whatever reason, cannot lose its eligibility for a declared dividend payment if it would otherwise qualify.

This does not mean that the company cannot reduce or offset outstanding premiums owed by the amount of the dividend payable. However, the offset can only be applied towards premium owed on the policy for which the dividend was declared unless the company has prior, written consent from the policyholder to apply it to premiums owed on other policies (i.e. the offset cannot be applied to “any” premium owed).

The following references in filings will also not be accepted since they appear to violate this section: “policy expiration” instead of “expiration/termination” or “expiration/cancellation”; and “net annual premium” instead of “net audited premium”.

DIFFERENTIATING GUIDELINES FOR MULTIPLE PLANS

If the company offers multiple dividend plans and a policyholder can qualify for more than one of those plans, the plans must have differentiating eligibility guidelines or the company must demonstrate it has controls in place in order to avoid unfair discrimination among policyholders of the same class of business when determining which of the dividend plan options will be applicable to individual risks.

DIVIDENDS CANNOT BE GUARANTEED

Pursuant to s. 631.51, Wis. Stat., dividend plans cannot be guaranteed and must be declared by the Board of Directors. All dividend materials and documents should clearly and conspicuously disclose such.

ESTIMATED OR ANTICIPATED DIVIDENDS AND/OR NET PREMIUMS

It is OCI’s position, based on ss. 628.34 (1) & (2) (a) and 631.51 (2), Wis. Stat., that estimated or anticipated dividends cannot be used to reduce the initial premium paid on insurance policies. In addition, estimated or anticipated dividends should not be credited against the unearned premium to display a net premium in a proposal or as part of a sales presentation. Proposals should not show billing plans, collections arrangements, or the total estimated premium using a net premium based on estimated or anticipated dividends.

Our position does not prevent an agent or company from showing estimated or anticipated dividends in a regular proposal or sales presentation, so long as the proposal or sales presentation meets with our position. In addition, every reference to estimated or anticipated dividends should clearly indicate that a dividend cannot be guaranteed

¹ Documents available on our website at <http://oci.wi.gov/workcomp.htm>. Although they reference only worker’s compensation, they apply to dividends for all lines of business, except life and annuities. ² Document available on our website at http://oci.wi.gov/ins_rev.htm.

and must be declared by the Board of Directors of the insurer. Refer to OCI's *Wisconsin Insurance News* 2010 Winter Issue #1 ² and *Bulletin to Insurers* dated June 2, 1998 ¹.

SAFETY GROUP DIVIDEND PLANS

Section 631.51, Wis. Stat. requires insurers to pay dividends to the policyholder. As of August 2011, it is permissible for the insurer to pay dividends to the safety group/third party association rather than directly to the eligible members/policyholders, provided all of the following apply:

1. The policyholder enters into a written contract with the third party association assigning the dividend to the association;
2. The worker's compensation insurer agrees to the assignment of the dividend; and
3. The worker's compensation insurer notifies the policyholder of the amount of the dividend at the time the dividend is paid to the third party association.

MISCELLANEOUS

It is considered misleading, pursuant to s. 628.34 (1), Wis. Stat., to refer to any dividends as refunds or refer to dividend plans as rating plans or retention plans.

¹ Documents available on our website at <http://oci.wi.gov/workcomp.htm>. Although they reference only worker's compensation, they apply to dividends for all lines of business, except life and annuities. ² Document available on our website at http://oci.wi.gov/ins_rev.htm.